



FILED
May 07 2008, 11:13 am
Kevin L. Smith
CLERK
of the supreme court,
court of appeals and
tax court

BAILEY, Judge

Case Summary

Appellant-Defendant James O. Hill, Jr. appeals his convictions for Possessing Marijuana¹ and Paraphernalia, both as a Class A Misdemeanors.² We affirm.

Facts and Procedural History

On August 1, 2005, Hill was driving a rented car with three passengers, including Jensen Hurst who was seated behind Hill. Patrol Deputy Jeff Ripley initiated a traffic stop because the car was traveling above the speed limit. As he approached the vehicle, Deputy Ripley detected a strong odor of burnt marijuana emanating from the driver's side window. After Hill informed Deputy Ripley that there were two weapons in the vehicle, all of the vehicle occupants were ordered to exit the car and were placed in handcuffs. All occupants had bloodshot eyes and exuded a strong odor of marijuana.

Marijuana was found scattered across the entire front seat and floorboard. Rolling papers were found in a "cubby hole" underneath the radio located between the passenger and driver's seats. Two bags of marijuana and a taser were found in the back seat. A K-9 unit dog at the scene alerted to the whole vehicle.

The State charged Hill with possession of marijuana and paraphernalia, as Class A misdemeanors. After a bench trial, Hill was found guilty as charged.

Hill now appeals.

¹ Ind. Code § 35-48-4-11.

² Ind. Code § 35-48-4-8.3.

Discussion and Decision

On appeal, Hill argues that there is insufficient evidence to support his convictions on the theory of constructive possession. In our review, we consider only the probative evidence and reasonable inferences supporting the judgment and will affirm the conviction unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” Brown v. State, 868 N.E.2d 464, 470 (Ind. 2007) (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)).

Possession of contraband can be characterized as either actual or constructive. Henderson v. State, 715 N.E.2d 833, 835 (Ind. 1999). Constructive possession occurs when a person has the “intent and capability to maintain dominion and control over the item.” Id. (quoting Walker v. State, 631 N.E.2d 1, 2 (Ind. Ct. App. 1994)). For this characterization of possession, the State must demonstrate the defendant’s knowledge of the contraband, inferred either from the exclusive dominion and control over the premises or, if non-exclusive, evidence of additional circumstances pointing to the defendant’s knowledge of the presence of the contraband. Id. at 835-36 (quoting Woods v. State, 471 N.E.2d 691, 694 (Ind. 1984)).

Proof of dominion and control over contraband can be found through a variety of means: (1) incriminating statements by the defendant, (2) attempted flight or furtive gestures, (3) location of substances like drugs in settings that suggest manufacturing, (4) proximity of the contraband to the defendant, (5) location of the contraband within the defendant’s plain view, and (6) the mingling of contraband with other items owned by the defendant. Grim v. State, 797 N.E.2d 825, 831 (Ind. Ct. App. 2003). To establish that the defendant had the

requisite dominion and control, the State must demonstrate that the defendant was able to reduce the contraband to his personal possession. Id.

Here, Hill, the driver of the car, did not have exclusive dominion and control over the interior of the car as three passengers accompanied him. However, evidence of additional circumstances points to Hill's knowledge of the presence of the marijuana and the rolling papers. As for the marijuana, it was in plain view, scattered across the front seat and floorboard underneath Hill's feet. Furthermore, the smell of marijuana was emanating from the car that Hill had rented. Hill also had bloodshot eyes and his person and breath smelled of marijuana, indicating his ingestion of the contraband. This is sufficient evidence to demonstrate that Hill had the requisite dominion and control over the marijuana to support the conclusion of constructive possession.

As to the paraphernalia, the rolling papers, they were also in plain view in an open cubby underneath the radio between the driver and passenger seats. Along with the indicators of Hill's intoxication, these circumstances lead to the reasonable inference that Hill used the rolling papers as means to ingest the marijuana. This is sufficient evidence to demonstrate that Hill had constructive possession of the rolling papers.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.